
**MINUTES OF SYMMES TOWNSHIP BOARD OF ZONING APPEALS
REGULAR MEETING
August 3, 2020**

The meeting was called to order at 7:21 p.m. Members of the Commission present were: Mr. Fowler, Ms. Harlow, Mr. Havill, Mr. Horvath, and Mr. Wolfe.

Also present were: John Huth, Hamilton County Senior Planner and Luanne Felter, Zoning Secretary.

PUBLIC HEARINGS

MS. HARLOW convened the public hearing for BZA 2020-07 for the property located at 11988 Timberlake Drive.

MR. HUTH stated that this is a variance request to allow a detached accessory fireplace in the side yard. The fireplace, which has already been constructed, is 5 feet, 7 inches wide by 7 feet high and located 4½ feet from the property line of 11980 Timberlake Drive. The property is unique in that the rear of the house faces the street. The garage entry and front door are accessed from a driveway that wraps around the home. He depicted the locations on a map. In order for the fireplace to meet code it needs to be five feet from the side property line.

MR. FOWLER wanted to know how close the next-door neighbor's house is to this fireplace.

MR. HUTH stated that it is approximately 15 feet.

JULIE CARNES (11988 Timberlake Drive, Cincinnati) stated that the subdivision has unusual lots that are not square. When they built the house, they turned it so they would have a bigger backyard not realizing that it would be considered their front yard. The fireplace was constructed about two years ago and the neighbor at 11980 Timberlake Drive was aware of it. They added landscaping to create a barrier and increase aesthetics. Their house sits higher than their neighbor's house due to the topography so they actually look onto his roof. It would be an extreme hardship to remove the fireplace due to its location and the cost involved.

KEVIN CARNES (11988 Timberlake Drive, Cincinnati) stated that the deck and fireplace were built two years ago and not one of the inspectors on site ever mentioned that it was in violation.

MR. HORVATH wanted to know when the inspectors were out and wanted to know why we are here talking about this two years later.

MRS. CARNES explained that they had different builder inspectors come out during the construction of the deck extension to check the footers and framing. Before they could schedule the final inspection, they needed the contractor to come out and finish a small section. However, the contractor kept delaying. During that time period, the Zoning Inspector came out to see why the final inspection had not been done thinking maybe it was just overlooked and noticed the fireplace and left a notice of violation in our mailbox.

MR. WOLFE wanted to know if the plans for the deck included the fireplace.

MR. CARNES stated that it did not. The fireplace was already existing when we applied for the deck permit.

MR. WOLFE wanted to know if the fireplace would be permitted if it was attached to the deck.

MR. HUTH stated that it would not because it does not meet the required setback for principle structures of 15 feet.

MR. CARNES stated that they tried to create as much privacy between the two homes as possible so they are not looking at the neighbor's front door. The landscaping is a better option than a fence. The evergreen trees provide privacy year-round. It took several years for them to fill it all in because it was expensive and they wanted to do it right.

RICK WISCHER (11975 Timberlake Drive, Cincinnati) stated that he lives across the street. His primary concern is that if this permanent structure is allowed to remain in the front yard it will set a precedent and change the dynamics of the neighborhood. There is no privacy. Since the hot tub went in there have been loud parties. On multiple occasions it has been so loud that it woke him and his wife up. In my opinion permanent structures should be confined to the back yard.

NORMAN FALICK (11999 Timberlake Drive, Cincinnati) stated that there are not any other houses in this neighborhood that are built backwards and at a weird angle. It was a bad decision on their part to place the house that way. I don't believe it will be a hardship for them to remove the fireplace.

MIKE PREISSLER (12054 Paulmeadows Drive, Cincinnati) stated he is also concerned that by allowing a permanent structure in the front yard it may set a precedent. He finds it hard to believe that when they decided to flip their house they didn't know that the rear yard would be considered their front yard. Due to the elevation, smoke from the fireplace is getting into the skylight and windows of the neighbor's property.

CAROL MELDON (11983 Timberlake Drive, Cincinnati) stated that she lives directly across the street from the subject property. Every house in this neighborhood has their front door facing the street. She doesn't know why they decided to put their house backwards but it looks out of place. They keep adding on to the house which directly affects us. The hot tub is basically a pool. The kids have numerous parties where the neighbors are awoken at 2:00 a.m. The fireplace needs to be moved to their back yard. Zoning rules are in place for a reason.

JANINE WISCHER (11975 Timberlake Drive, Cincinnati) wanted to know if anyone on the Board would like to live next door to this. The structure is clearly a violation and, if approved, will set a precedent for the whole Township. The Carnes do whatever they want. When the landscaping company came to cut down trees, they had vehicles parked on Mike Heath's (the neighbor at 11980 Timberlake Drive) property and didn't have the courtesy to inform him. I called him and sent pictures.

MR. HORVATH wanted to clarify that the Board's only role is to decide what to do with the fireplace. They cannot resolve the other issues.

MIKE HEATH (11980 Timberlake Drive, Cincinnati) stated that he has lived in his home for 27 years. He bought it because it had a nice wooded lot. When they started to build the house next door, he wasn't too concerned about it but there have been ongoing issues that directly affects him. I talked to the Carnes about my concerns. However, for the past eight years I have been going back and forth to Florida to take care of my mom. The Carnes knew about my situation but seemed to take advantage of it because every time I came back there was another transformation in the yard. They even cut down some of my old growth trees. One day I saw out my window that they had a skid of cinder blocks so I wandered over to see what was going on. Mr. Carnes said they were installing a fireplace. I told him permanent structures are not allowed in the front yard but he said it will not be permanent. Later I saw him and his son pour a foundation. This fireplace was not in the original plans when the house was built. When they designed the patio, they extended it straight out with parallel lines but then took it out an extra 10 feet towards my land. The Zoning Inspector came out when they tried to shut down the road to bring in a crane to deliver a swim spa that is 20-30 square feet under the regulations for a swimming pool. She realized that they did not have any permits and stopped

all construction at that time. They had to dig up posts. Once everything was resolved they moved forward on the deck and fireplace. The fireplace is over 5 feet and not capped. It blows smoke into my windows below and is a fire hazard in the dry season with my wood siding. What are they going to put up next? My mom recently passed away so I am here to stay now. I don't want to live like this so I am asking you to do what is right.

BRIAN MERRICK (12086 Timberlake Drive, Cincinnati) stated that if the fireplace is approved this will set a precedent. We all want to do things in our yard but can't ignore the zoning regulations.

MADHAM CHIDAMBARAM (11991 Timberlake Drive, Cincinnati) stated that his neighbors have covered all the issues. However, he wants to emphasize that this variance will set a precedent and everyone will start building next to each other's property lines.

MR. HEATH emphasized that the required setback for front yards is fifteen feet.

MRS. CARNES stated that she did not realize that the neighbors felt that way. She wants them to know they can always call her if the kids are too loud. Noise does travel though and she can hear conversations in her neighbors' yards. They did hire a landscaper to cut down a tree because it was dead but the company was a disaster.

MR. CARNES said he was baffled by the comments tonight. No one ever came to them with their concerns. If they knew the structure was not permitted, they should have spoken up. We believe we are adding value to our home and the surrounding properties.

MR. FOWLER wanted to know if they got a permit for the fireplace, and if so, did they hire a contractor. How long did it take?

Mr. Carnes said that he did not realize he needed a permit for the fireplace; he built it by himself. It took about 2 ½ to 3 weeks to build.

MR. FOWLER wanted to know if the patio was built prior to the fireplace.

MR. CARNES said that the patio was poured when the house was built.

MR. HORVATH wanted to know if both concrete slabs depicted in the picture were part of the original pour.

MRS. CARNES said that they were.

MR. WOLFE wanted to know if the retaining wall was done during the construction phase.

MR. CARNES stated that it is not a retaining wall; it is a decorative structure that you can sit on. The fireplace was built over the existing concrete slab and they built the decorative structure around it.

MS. HARLOW closed the testimony.

MR. FOWLER agreed that the fireplace is in violation. However, he does not believe it is a big deal since the deck and hot tub are permitted. He noted that under the Notice of Refusal it states that the fireplace is to be located within the side yard less than five feet from the southeast property line. We are only talking about a six-inch difference which is miniscule.

MR. HORVATH noted that the fireplace is a detached structure by definition. As to whether this should be considered the front or back yard there are 180 homes in this subdivision that normally have their front yard face the street. The fireplace is not permitted and is a very clear violation. If you refer to the factors to be considered in the Staff Report, it cannot be supported.

MR. WOLFE noted that a front yard faces the street. They need to work with that. Just like corner lots have two front yards residents have to work around that as well. The fireplace is a detached accessory structure sitting in the front yard and is illegal. The owners should have been aware of it. The fireplace is a detriment to the neighbors and should be relocated to the rear yard. They could build it into the deck so it is part of the structure.

MR. HAVILL wanted to know if the concrete patio is considered part of the house.

MR. WOLFE stated that it is not. It is like a sidewalk. The deck is a raised structure attached to the house. They could construct the fireplace into the deck so it is part of the house but obviously the deck would need to be modified for safety reasons.

MR. HORVATH noted that it is technically located in the front yard and the setback requirement is 15 feet.

MR. WOLFE made a motion to deny the construction of a detached accessory fireplace in the side yard located at 11988 Timberlake Drive.

MR. HORVATH seconded the motion and the roll call vote was as follows:

MR. WOLFE – aye, Mr. Horvath – aye, Mr. Havill – nay, Mr. Fowler – nay, Ms. Harlow – aye.

MS. HARLOW convened the hearing for BZA 2020-08 for the property at 8988 Symmes Trace Court.

MR. HUTH stated that this is a request to allow a swing set that is already erected on a corner lot in the rear yard which is technically in the front yard 30 feet from the property line of Symmescreek Drive and 20 feet from the deck. The swing set is very visible as you enter. This is a unique property in that it has three frontages. The back yard that runs along Montgomery Road is steep and wooded. There may be a spot in the side yard for the swing set where it is less visible but it is not permitted.

MR. HORVATH wanted to know if this is considered an accessory structure.

MR. HUTH said that it is not. The Zoning Resolution specifically refers to swing sets and prohibits them in front and side yards. If you refer to Section 342.5 jungle gyms and other play devices are listed as well and must be located five feet away from the property line.

MR. HORVATH wanted to know if any similar variances have been granted in this vicinity.

MR. HUTH said that there was a variance granted for a fence but not a swing set.

ERIN METZ (8988 Symmes Trace Court, Loveland) stated that they originally placed the swing set by the driveway but got cited so they moved it back to its current location. They may move it even closer to the deck. She cannot place the swing set in her rear yard as there is no exit from the house and it is steep. She plans to add more vegetation around the playset to screen it from view.

MR. FOWLER noted that this is a difficult lot to do anything with. Since no one is here protesting he is inclined to approve the variance.

MR. HORVATH wanted to know if the Board could impose conditions in the resolution relative to the landscaping.

MR. HUTH said they could, however, he would recommend they be as specific as they can so the Zoning Inspector can enforce it.

MR. WOLFE noted that he is ok with granting this variance as long as vegetation is added.

MR. HORVATH stated that he would like to see the swing set moved closer to the corner of the deck.

MR. WOLFE made a motion to grant the variance for the relocation of the swing set at 8988 Symmes Trace Court no less than 30 feet from the right of way of Symmescreek Drive and that a minimum of three trees or shrubs shall be planted between the swing set and Symmescreek Drive or Montgomery Road.

MR. HORVATH seconded the motion and the roll call vote was as follows:

Mrs. Harlow – aye, Mr. Horvath – aye, Mr. Wolfe – aye, Mr. Fowler – aye, Mr. Havill – aye.

ADMINISTRATIVE MATTERS

MR. WOLFE made a motion to approve the minutes of the June 1, 2020 minutes. MR. HORVATH second the motion and the roll call vote was as follows:

Mrs. Harlow – aye, Mr. Horvath – aye, Mr. Wolfe – aye, Mr. Fowler – abstain, Mr. Havill – aye.

ADJOURNMENT

MS. HARLOW adjourned the meeting adjourned at 9:45 p.m.

Approved:

Jennifer Harlow, Chairperson

Luanne Felter, Zoning Secretary